The Planning Inspectorate

# Appeal Decision

Site visit made on 4 August 2020

**by Jonathan Price BA(Hons) DMS DipTP MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 19 August 2020**

**Appeal Ref: APP/U2615/W/20/3246532**
**20 Havelock Road, Great Yarmouth NR30 3HQ**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mr Stacey Bryenton against the decision of Great Yarmouth Borough Council.
- The application Ref 06/19/0427/CU, dated 28 July 2019, was refused by notice dated 2 August 2019.
- The development proposed is change of use from residential to HMO.

## Decision

1. The appeal is dismissed.

## Preliminary Matters

2. The proposal is retrospective, with the property already in use as a Class 4[1] small house in multiple occupation (HMO). Class L of the Town and Country Planning (General Permitted Development) (England) Order 2015 permits the change of use from dwellinghouses to small HMOs (and vice versa). However, on 28 May 2012, the Council made an Article 4 Direction removing such permitted development rights, to retain control over the formation of small HMOs in the Borough.

## Main Issues

3. Whether the proposal would be acceptable with regard to (i) development plan policy for the change of use of properties to HMOs, particularly in respect of the effects on the living conditions of neighbouring occupiers, and (ii) the safety of occupiers of the property with regard to the level of flood risk.

## Reasons

*(i) Development plan policy for HMOs and the living conditions of neighbours*

4. The proposal relates to a property at the end of a terrace of similar two-storey houses. Beyond is a small gap, then a food takeaway and following that a public house. On the ground floor the proposals show a bedroom, communal lounge, kitchen/dining room, bathroom and rear yard. Upstairs there are three bedrooms, two with en-suite bathrooms, and a separate toilet.

[1] Class C4 of the Town and Country Planning (Use Classes) Order 1987 - use of a dwellinghouse by not more than six residents as a "house in multiple occupation

5. Saved Policy HOU23 of the 2001 Great Yarmouth Borough-Wide Local Plan permits the conversion or change of use of properties to HMOs where certain criteria are met. Criterion E is where there is no adjoining property in use as a single unit of family accommodation. The proposal fails on this, as the attached terraced house is in such a use.

6. The rationale for the policy relates to the more intense use of bedrooms in HMOs, which may then result in harm to the living conditions in neighbouring family dwellings due to noise and disturbance. However, there is no evidence of the occupation of the bedrooms at this property causing disturbance to the adjacent occupiers at No 19. Therefore, I find nothing to substantiate a failure to meet criterion F of Policy HOU23. This is in respect of the proposal being without significant detriment to the living conditions of neighbouring occupiers.

7. There are other HMOs in this area. The Council refers to three listed in its Register within 75 metres of the appeal premises. However, there does not appear to be such a high concentration of HMOs that this proposal conflicts with criterion B of Policy HOU23 by having a significantly adverse effect on the character and amenity of the locality.

8. The change of use proposed offers improved living conditions for occupiers when compared to that of the five bedroomed HMO refused here by the Council in 2018[2]. The Council does not dispute that the accommodation is well managed and clean. No harm to the living conditions of the adjoining dwelling at No 19 is shown. The pressing need for residential accommodation, including of this kind, is a material consideration sufficient to indicate that in this case the proposal is acceptable otherwise than in full compliance with the terms of development plan policy.

*(ii) The safety of future occupiers with regard to the level of flood risk*

9. The National Planning Policy Framework[3] sets out the Government's approach to flood risk. As provided by paragraph 155, this is to direct development away from areas at highest risk, but where this is necessary ensuring lifetime safety without increasing flood risk elsewhere. This is achieved by applying first a sequential test, to steer new development to areas with the lowest risk of flooding, and secondly, where required, an exception test.

10. The appeal property is within Flood Zone 3[4] which is land at the highest risk of flooding. Residential development is defined in the Government's Planning Practice Guidance (PPG) as 'more vulnerable' to flood risk. In a Zone 3 location, this would require a Flood Risk Assessment (FRA) to show the proposal could satisfy both the sequential and exception tests.

11. The proposal is relatively small-scale, involving just one bedroom on a ground floor creating a higher flood risk vulnerability compared to the previous use. However, a site-specific FRA would nonetheless be required to meet Government policy. The PPG makes it clear that the FRA should be proportionate to the degree of flood risk, appropriate to the scale, nature and location of the development and make optimum use of information already available, including that in any Strategic Flood Risk Assessment for the area. However, in the absence of an FRA, the proposal is unacceptable in failing to

[2] 06/18/0495/CU
[3] February 2019 Ministry of Housing, Communities and Local Government
[4] Interactive flood risk maps available on the Environment Agency's web site

adequately address the safety of occupiers with regard to the level of flood risk.

**Conclusion**

12. The proposal is not shown to cause any material harm to the character of the area or the living conditions of the neighbouring residents at No 19. The benefits of the residential accommodation provided would therefore be sufficient to outweigh any harm through the conflict with development plan policy for the establishment of HMOs. However, the accommodation would be at greater risk from flooding in comparison with the previous use of the property, where conventionally sleeping accommodation would have been confined to the first-floor, where less vulnerable to flood risk impacts. The failure to provide a site-specific FRA to support a decision over this proposal conflicts with Government policy over permitting vulnerable development in high flood risk areas. It is for this reason I conclude the appeal must be dismissed.

*Jonathan Price*

Inspector